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May 24, 2002

Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
455 12th Street, SW Portals II Building
Washington DC 20544

Re: In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147

Dear Ms. Dortch:

The Public Service Commission of Kentucky respectfully submits this letter in support of the National Association of Regulatory Utility Commissioners ("NARUC") April 5, 2002 pleadings filed in response to the Notice of Proposed Rulemaking ("Notice" or "*Triennial Review*") issued by the Federal Communications Commission ("Commission" or "FCC") in the above-captioned proceedings.¹ Because of the significant impact decisions in this proceeding will have on existing State commission policy initiatives, the Kentucky Commission concurs in and specifically endorses NARUC's April 5, 2002 comments which request (1) that the FCC immediately convene a § 410(b) Federal-State Joint Conference to facilitate, inform and coordinate its implementation of the three-year UNE review and (2) that the FCC assure that States retain the authority to impose additional unbundling "obligations upon incumbent LECs beyond those imposed by the national list, as long as they meet the requirements of [§] 251." Specifically, we endorse the following NARUC positions:

(1) *A Joint Conference is in the Public Interest:* Given the critical role played by State regulators in implementing the statutory UNE regime, as well as the intensive

¹ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket Nos. 01-92, 96-98 and 98-147, Notice of Proposed Rulemaking, FCC 01-361 (rel. Dec. 20, 2001) ("*Notice*").



data-specific and State-specific nature of the three-year review, at a minimum, the FCC should establish a formal mechanism to secure the State participation necessary for an informed application of the statutory “necessary” and “impair” standards.

(2) *State Authority To Add New UNEs/Obligations:* We agree with the FCC findings that § 251(d)(3) of the 1996 Act “grants State commissions the authority to impose additional obligations upon incumbent LECs beyond those imposed by the national list, as long as they meet the requirements of [§] 251.” We believe Congressional intent as outlined in the 1996 federal statute, existing State enabling statutes, and the FCC rules and prior findings in this and related dockets support this approach.² Though we acknowledge the opinion entered today by the DC Circuit Court,³ we continue to believe that States should determine the UNEs needed to address State-specific marketing issues.

(3) *Impact of Federal Minimum List:* As recognized implicitly in the UNE Remand Order’s specific State authority findings, the States are better positioned to conduct a detailed review of additional unbundling that is appropriate for local market conditions. Consequently, the FCC should defer to State determinations of whether unbundling requirements in any State should collapse to the existing or new federal minimums. Assuming any new federal minimum removes one or more UNE from the national list or restricts availability of any UNE, such limitations should not apply in any State unless that State first determines that a competitor’s access is “necessary” or whether lack of access “would impair” that competitor’s ability to offer services, or is required as a matter of State rule or statute.⁴

² See, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696, 3766-7 at ¶¶ 153-154 (rel Nov. 5, 1999) (“*Remand Order*”). See also NARUC’s February 2002 *Resolution Concerning the States’ Ability to Add to the National Minimum List of Network Elements* (“[NARUC] urges the FCC to recognize that States may continue to require additional unbundling beyond that required by the FCC’s national minimum.”)

³ *United State Telecom Association, et al. v. Federal Communications Commission, et al.* (No. 00-1012 and 00-1015), entered May 24, 2002.

⁴ See, *NARUC December Letter* at 2 (“[A] party seeking to remove or scale back a UNE bears the burden of proof to show, by a preponderance of evidence, that the requested relief is justified.”)



(4) *Impact of Federal Action on UNE-P:* The FCC "...should support the implementation of universal availability of the UNE-P, on the basis that one form of entry should not be favored over another." Specifically, the FCC should assure that its implementation of § 251 "does not favor one method of entry, at the expense of other methods of entry."⁵

Respectfully submitted,

Thomas M. Dorman
Executive Director

/LH/rst
cc: File

⁵ See, *NARUC November 13, 2001 Resolution on the UNE-P Platform* ("[A]ny party seeking to remove or scale back a UNE bears the burden of proof to show, by a preponderance of record evidence, that the requested relief is justified.")

